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91-821

Supreme Court, U.S.
FILED
SEP 19 1991
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

GLENN E. CAVAZOS

PETITIONER

V.

CITY OF SUNNYSIDE

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE U.S. SUPREME COURT AND COURT OF APPEALS OF WASHINGTON

GLENN E. CAVAZOS, PRO SE

917 SO. 10TH. ST.

SUNNYSIDE, WA 98944

(509) 837-7432

QUESTIONS PRESENTED

1. Can the Superior Court of Yakima County, the Court of Appeals, and the Supreme Court of the State of Washington deny me, the petitioner the protection of the law?

2. Were my Constitutional Rights violated by a failure to read to me The Miranda Rights?

3. Was there a probable cause for my arrest?

4. Was I tried by a jury of my peers, which is impartial as required by the Constitution?

5. Did the search of my vehicle violate the Fourth Amendment to the Constitution?

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BRIEF OF PETITIONER

OPINIONS BELOW

1. Order of Washington Supreme Court appears in Appendix A.
2. Order of Supreme Court of Washington appears in Appendix B.
3. Order of Court of Appeals of Washington appears in Appendix C.

4. Order of Court of Appeals of Washington appears in Appendix D.

5. Order of Superior Court of Yakima County, Washigton appears in Appendix F

BEST AVAILABLE COPY

JURISDICTION

The jurisdiction of the court is based on 28 U.S.C.§ 1257. The order of the Supreme Court of Washington denying Motion for Discretionary Review was issued on July 3rd, 1991. My purported petition for writ of certiorari was received by the Supreme Court of the United States within 90 days.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution, which provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The Fifth Amendment to The United States Constitution which provides:

> "nor shall any person be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to The United States Constitution which provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

CITY OF SUNNYSIDE	)	SUPREME COURT NO. 58101-1
Respondent	)	
	)	
GLENN E. CAVAZOS	)	COURT OF APPEALS NO.
	)	11152-1-111
Petitioner	)	

STATEMENT OF THE CASE
FACTS CONCERNING THE CASE

On May 24, 1989 I was chased, knocked down and handcuffed by Officer Gutierrez and taken to the Sunnyside Police Station. Officer Gutierrez stops me whenever he sees me driving or walking. He pulls me out of the car, searches me and the car that I am driving without an explanation. Officer Gutierrez, harasses, arrests me and charges me with whatever crime he can think of.

On May 24, 1989 I was arrested and taken to the Sunnyside Police Department. I was forced to take a breath test, even though the breath analysis measured .08 and I was not driving, I was forced to spend the night in jail. Officer Gutierrez took my driver's license, charged me with a D.W.I., Disorderly Conduct, and failure to stop at a stop sign. I was forced to sign all the papers that were put in front of me. Officer Gutierrez and Officer Radder threatened to charge me with more offenses if I didn't sign the papers and tickets admitting to the charges that they had imposed on me. Officer Gutierrez openly admitted in court to taking the keys to my

father's car and searching it without a properly issued search warrant, after he had unlawfully incarcerated me on the night of May 24, 1989.

The evidence presented in court was all hearsay evidence. Mr. Heid, the prosecuting attorney believed the testimony of Officer Gutierrez, even though, it was not the truth, I appealed my case because I needed help and protection from the court against this police officer. I am helpless against Officer Gutierrez, because he is more powerful than I am. He is also protected by the law which he uses to his advantage. The dismissal of my appeal will only give Officer Gutierrez more power to do whatever he feels like doing, and will cause severe hardship on my family and me. I do not know what he will accuse me of next.

If my case is remanded to Municipal Court for imposition of sentence, I will be unlawfully prosecuted. I will be punished for a crime I did not commit.

On November 21, 1990 I filed a letter written by Mrs. Molly Ramirez, where she states that the reason she declined as a jury member in my case was due to the fact that she felt the other jurors were of a biased nature and that it would have been very difficult for her to participate efficiently.

I am asking that the SUPREME COURT OF THE UNITED STATES rule in my favor and not dismiss my appeal, but dismiss all charges brought against me by Officer Gutierrez and the City of Sunnyside. The City of Sunnyside failed to prove my guilt beyond a reasonable doubt and in accordance with proper procedure.

SUMMARY OF ARGUMENT

1. I testified to the fact that the police officer did not read or show me the paper that referred to as identification no. 8 and accepted as evidence. I did not refuse to sign the paper. The fact is I was never presented with it ... Transcript of proceedings page 162.

2. On pages 74 and 64 of city's transcript and page 67 of my transcript, Officer Gutierrez testified that I was walking when he arrested me and took me to the Sunnyside P.D. where he kept me incarcerated until the following day.

Officer Gutierrez and the City of Sunnyside violated the XIV Amendment when they decided to incarcerate me.

3. The jury that heard my case were all friends of the police officers and the city attorney. Pages 1 through 19 of my transcript and page 4 through 7 of city's transcript, most of the jurors state that they are acquaintances of the police officers and Mr. Heid. Therefore, instructions no. 8, 9, and 13 were disregarded. The jury made the decision on personal beliefs. They were trying to please the police officers and the city attorney. The law was disregarded

and their minds were made up as to the outcome of my case before the testimony was heard.

On page 62 city's transcript and page 30 of my transcript, Mr. Solomon the B.A.C. Technician from the Washington State Patrol, testifies that the Sunnyside Breath Testing Instrument was properly maintained and in good working order on May 24, 1989. The breath measured .08 and, even though I was not driving and I was not legally drunk, I was still convicted of the crime of driving under the influence of alcohol.

4. On page 157 of the city's transcript and page 69 of my transcript, Officer Gutierrez testifies that he took the keys to my father's car, searched it, found a letter with my name on it. He also testified that he started the car. Without a valid search warrant. Violation of the IV Amendment. Mr. Heid, city attorney, asks: "In fact, inside that car was correspondence to you wasn't there?"... Transcript of proceedings, page 133. Testimony of Chico Rodriguez, Jr.: "Officer Gutierrez, after arresting Mr. Cavazos, we drove by the car and to secure the car we both got out and locked the doors of the car."... Transcript of proceedings, page 114. Testimony of Officer Gutierrez: "I took the keys back to the

vehicle, opened it up and started it. I think turned it off, secured the vehicle, and brought the keys back to the P.D." page 157.

CASES

U.S. SUPREME COURT 1982--Kolender v. Lawson, articulated the importance of individual freedoms, California statute was struck down by Supreme Court. The statute, said the court, leaves us free to walk the streets at the whim of any police officer. This statute gave the police officer too much discretion and therefore, "furnishes a convenient tool for harsh and discriminatory enforcement, by local prosecuting officials, against particular groups deemed to merit their displeasure.

U.S. SUPREME COURT 1983--Tennessee v. Garner

The Supreme Court held that the Tennessee statute "is unconstitutional insofar as it authorizes the use of deadly force against...an apparently unarmed, nondangerous fleeing suspect."

Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of force to do so.

ARGUMENT

I.

There should not be any doubt in anyone's mind that my rights were violated and that my trial was a mistrial and should be dismissed according to the law. The City of Sunnyside failed to find me guilty beyond a reasonable doubt and in accordance with proper procedure. Due process of law was disregarded in my case.

The Superior Court of Yakima County, the Court of Appeals, and the Supreme Court of Washington have ignored or refused to address these issues thus denying (me) the petitioner due process of law.

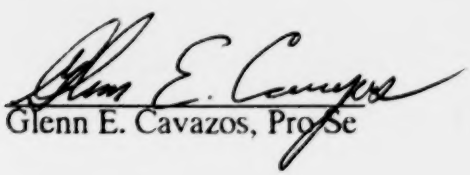
RULE OF THE LAW:

The state/city must follow proper procedures in proving its case against the defendant. Violation of these rules will impair the rights of defendants and threaten the foundation of the American system of criminal justice.

CONCLUSION

For these reasons, I the petitioner, pray that this Honorable Court will issue a Writ of Certiorari and review decisions and opinions of the Superior Court of Yakima County, the court of appeals of the State of Washington and the Supreme Court of Washington; and upon such review will reverse the decision of the courts in Washington and grant a Writ of Certiorari.

Respectfully submitted,



Glenn E. Cavazos, Pro Se

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Printed in the U.S.A.- 901090 9876543

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RESPONDENT

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GLENN E. CAVAZOS, PRO SE

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APPENDIX-A

THE SUPREME COURT OF WASHINGTON

CITY OF SUNNYSIDE,	NO. 56101-1
Respondent	ORDER DENYING MOTION TO MODIFY COMMISIONER'S RULING.
v.	
GLENN CAVAZOS	
Petitioner	

This matter came before Department I of the Court on July 2, 1991. Motion Calendar on Petitioner's Ruling. Department I having considered the motion and the files herein;

Now, therefore, it is hereby

ORDERED:

That Petitioner's Motion to Modify Commisioner's Ruling is denied.

Dated at Olympia, Washington this 3rd day of July, 1991.

CHIEF JUSTICE

APPENDIX-B

THE SUPREME COURT OF WASHINGTON

CITY OF SUNNYSIDE, Respondent, v. GLENN CAVAZOS Petitioner,	NO. 58101-1 RULING DENYING MOTION FOR DISCRETIONARY REVIEW

Glenn Cavazos was convicted in Sunnyside Municipal Court of driving while intoxicated and disorderly conduct. The convictions were affirmed by Yakima County Superior Court, and Division Three of the Court of Appeals denied Mr. Cavazos' motion for discretionary review. He now seeks review by this court. Although Mr. Cavazos has entitled his pleading to this court as a petition for review, the Deputy Clerk's April 17, 1991 letter to Mr. Cavazos and to counsel for respondent correctly explains that the matter is

properly a motion for discretionary review, and must be so treated.

I have now studied both the pleadings in this court and the entire Court of Appeals file. Having done so, I find Court of Appeals Commisioner Slak's ruling denying review by that court to be complete and persuasive. That ruling sets forth both the facts and the law in some detail, and explains why the Court of Appeals did not find any grounds for review of the Superior Court's ruling under the criteria of RAP 2.3(d). I conclude that the Courrt of Appeals committed neither probable nor obvious error,nor did it depart from the accepted and unsual course of judicial procedings. There is thus no basis for review by this court See RAP 13.5(b)(1), (2), and (3).

The motion for discretionary review is denied.

_____
COMMISSIONER

May 23, 1991

APPENDIX-C-

The Court of Appeals

of The

State of Washington

Division 111

CITY OF SUNNYSIDE Respondent v. GLENN CAVAZOS Petitioner	No. 11152-1-111 ORDER DENYING MOTION TO MODIFY COMMISSIONER'S RULING

THE COURT having considered petitioner's Motion to Modify the Commisioner's Ruling of February 20, 1991; and being of the opinion the motion should be denied.

IT IS ORDERED, The Motion to Modify is hereby denied.

DATED: March 13, 1991.

FOR THE COURT:

CHIEF JUDGE

APPENDIX-D-

The Court of Appeals

of the

State of Washington

Division 111

CITY OF SUNNYSIDE, Respondent, v. GLENN CAVAZOS, Petitioner,	No. 11152-2-111 COMMISSIONER'S RULING

Glenn Cavazos seeks discretionary review of Yakima County Court order affirming his Sunnyside Municipal Court convictions of driving while under the influence of intoxicants and disorderly conduct.

Mr Cavazos' convictions were based on testimony of Sunnyside police officers who said they initially encountered him shortly after midnight on May 24, 1991, when they were called by the bartender of the Safari Restaurant. The

bartender had accused Mr. Cavazos of threatening and disturbing the tavern's patrons after he was told the bartender would no longer serve him alcoholic beverages. When police first responded to the call, Mr. Cavazos was not there. When he returned, according to the officers, they detected the odor of intoxicants and observed his intoxication. They said they warned him to stay out of the Safari to avoid being arrested for trespass. They said they also advised him not to drive.

Shortly thereafter, the officers testified, they saw Mr. Cavazos driving by the restaurant and attempting to hide his face from their view. Pursuing officers said they momentarily lost sight of him, but another officer reported seeing Mr. Cavazos walking on a nearby city road.

According to the officers, they asked Mr. Cavazos to produce * his driver's license, and he refused. He then ran away, was tackled by a

pursuing officer, arrested and eventually taken to the police station. Apparently en route to the station the officers locked up the vehicle they said Mr. Cavazos had been driving, and, in doing so, they noticed correspondence addressed to him lying on the back seat.

The results of Mr. Cavazos' breath test showed .08 grams of alcohol per 210 liters of breath. There was a dispute between Mr. Cavazos and the testing officer about the nature of the questions and answers asked and given during the pre-test phase.

Mr. Cavazos denied being intoxicated and denied driving the vehicle because, he said, it had run out of gas and it would not have been able to start. Apparently while Mr. Cavazos was in custody, the officers took the keys to the vehicle and started it.

No. 11152-1-111

Mr. Cavazos was convicted after a jury trial, and he appealed to Superior Court. Court-appointed counsel, in accordance with State v. Robinson 58 Wn. App. 599, 794 p. 2d 1923 (1990). rev. denied. 116 Wn. 2d 1003 (1991). filed an Anders * brief and requested permission to withdraw as counsel. The Superior Court, reviewed the record to determine whether there were arguable issues of merit, found none, dismissed the appeal and granted counsel's notice to withdraw. Mr. Cavazos pro se sought discretionary review pursuant to RAP 2.3 (d). *

He contends (1) he was denied an appeal; (2) he had ineffective counsel on appeal; (3) he was not driving when he was rrested for driving while intoxicated; (4) he was forced to sign all tickets, citations and documents under threat of additional charges; (5) his father's car was illegally searched without a warrant, and 96) one of the prospective jurors in his case said she

No. 11152-1-111

refused to serve on the panel because the other jurors were of a biased nature.

* Anders v. California. 386 U.S. 738, 18 L. Ed. 493, 87 S. Ct. 1396 (1967).

Mr. Cavazos was not denied an appeal. It is permissible for counsel to file an Anders brief on an appeal from district court to superior court. State v. Robinson. supra. Additionally, an indigent defendant does not have a constitutional roght to require his lawyer to argue all nonfrivolous issues that he wants advanced but which his lawyer, in his judgment, decides not to present on appeal. Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308, 77 1. Ed. 3d 987 (1983).

The brief of appellate counsel and legal authority supporting possible appellate issues. It, in fact, identifies some of the very arguments urged by Mr. Cavazos on discretionary review. The order of the Superior Court recites its consideration of the brief, as well as its review

No. 11152-1-111

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* Mr. Cavazos apparently filed a motion for an order of indigincy and appointment of counsel to pursue this discretionary review. The record does not show how, if at all, the Superior Court resolved the motion. In any event, Mr. Cavazos paid the filing fee in this court and proceeded without counsel to file his motion for discretionary review.

of the trial transcripts. Mr. Cavazos was not denied an appeal or the effective assistance of appellate counsel. State v. Robinson. supra.

The record clearly reflects testimony by arresting officers that they observed Mr. Cavazos, who, they determined, was intoxicated, driving shortly after their contact with him at the Safari Restaurant. A driver need not be arrested while driving to be charged with driving while intoxicated. The officers' testimony supports their decision to arrest Mr. Cavazos and the jury's determination of his guilt.

Nothing in the record supports Mr. Cavazos' claim he was forced or coerced to sign any documents.

No. 11152-1-111

As to the alleged search of his father's car, the trial judge initially prevented the admission during the State's case of any evidence obtained when the officers went to the vehicle. However, he permitted its introduction to impeach Mr. Cavazos' testimony the vehicle was out of gas and would not start. United States v. Havens. 446 U.S. 620, 100 S. Ct. 1912, 64 L. Ed. 2d 559 (1980) (use of illegally obtained evidence allowed to impeach statement on cross-examination related to direct).

Finally, although the affidavit of the prospective juror was filed in the Superior Court, it was filed more than 30 days after that Court denied Mr. Cavazos' appeal. Thus, it was not considered by either the District or Superior Court. As the Supreme Court recently said in State v Leach. 113 Wn. 2d 679, 693, 782 p.2d 552 (1989). " cases on appeal are decided only on evidence in the record." As the Court of Appeals noted in State v Humburgs. 3 Wn. App. 31, 36, 472 p2d 416

(1970). when faced with contentions concerning matters not in the record:

> The contentions now made would require us to make a determination of the truth of defendant's ex parte post trial claims concerning matters occurring out of court. For all we know, an evidentiary hearing would disclose that the defendant's present statements are controverted.....if there be a basis for the claims now made in an effort to show that, after considering the entire record, the accused was denied a fair and impartial trial, that basis must be established in separate proceeding, the merits of which we do not prejudge.

Therefore, with respect to matters outside the record about which Mr. Cavazos complains, the only remedy is to bring an independent proceeding by way of personal restraint petition under RAP 16.3.

No. 11152-1-111

State v King. 24 Wn. App.495, 505, 601 p.2d 982 (1979).

Mr. Cavazos has failed to establish any of the grounds for discretionary review of a decision by the Superior Court on review of a decision by a court of limited jurisdiction. RAP 2.3(d). The motion is denied.

February 20, 1991.

_____
COMMISSIONER

APPENDIX-E-

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

CITY OF SUNNYSIDE,	:	NO. 89-1-02044-6
	:	
Plaintiff,	:	ORDER DISMISSING APPEAL AND REMANDING TO MUNICIPAL
vs.	:	COURT FOR SENTENCING
	:	
GLENN CAVAZOS	:	
	:	
Defendant	:	

THIS MATTER, having come on before the above-entitled court for hearing on September 21st, 1990, on the appeal of the defendant, Glenn Cavazos, from his convictions of the offenses of Driving While Under the Influence of Intoxicants and Disorderly Conduct charged pursuant to Section 46.61.502 of the Revised Code of Washington and Section 9.60.010 of the Sunnyside Municipal Code respectively, and the court having heard and considered the statements and arguments of the parties and having reviewed the Transcript of proceedings in the Municipal Court from which the appeal was taken, and being fully advised in the premises.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the defendant's appeal be, and it hereby is denied.

2. That, as of September 21st, 1990, attorney Michael L. Everett be, and he hereby is , allowed to withdraw as attorney for the defendant and is releived from any further responsibility to participate in the proceedings involving this appeal.

3. That the matter be, and it hereby is, remanded back to the Sunnyside Municipal Court for imposition of sentence and further proceedings under Sunnyside Municipal Court cause nos. T-89-31975 and CR-89-32877.

DONE IN OPEN COURT THIS_____day of September, 1990.

_____
F. James Gavin, Judge

PRESENTED BY:

_____
Daniel B. Heid WSBA # 8217
Attorney for Plaintiff
City of Sunnyside

CERTIFICATE OF SERVICE

I Glenn E. Cavazos, hereby certify that three true corrected copies of the foregoing PETITION FOR WRIT OF CERTIORARI and APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI have been served on:

Mr. Daniel B. Heid

SUNNYSIDE CITY ATTORNEY

818 Edison Ave.

Sunnyside, Washington 98944

by depositing the same in the United States mail in a properly addressed envelope with sufficient postage.

This 12th day of ~~October~~ Nov. 1991.

Respectfully Submitted

Glenn E. Cavazos, Pro Se

917 So. 10th. St.

Sunnyside, Wa 98944

(509) 837-7432

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